STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	:	
	:	
Application for Review of Alternative Regulation Plan	:	**98-0252**
	:	
Illinois Bell Telephone Company	:	
	:	
Petition to Rebalance Illinois Bell Telephone Company's Carrier Access and Network Access Line Rates.	:	**98-0335**
	:	
Citizens Utility Board, People of the State of Illinois	:	**00-0764**
-vs-	:	
Illinois Bell Telephone Company	:	**Consol.**
	:	
Verified Complaint for a Reduction in Illinois Bell Telephone Company's Rates and Other Relief.	:	

ADMINISTRATIVE LAW JUDGES' PROPOSED AMENDMENTS TO POST EXCEPTIONS PROPOSED ORDER

I. MODIFICATIONS TO EXISTING MERGER SAVINGS SECTION OF FINAL PEPO (SECTION V, D)

The "Commission Analysis and Conclusion" to Section V. D of the Final PEPO addressing merger savings has been superseded by the Joint Proposal. The Commission Analysis and Conclusion found therein, as provided below, should be deleted in its entirety.

Commission Analysis and Conclusion

The Commission concludes that City/GCI's proposal should not be adopted. We were clear in Docket 98-0555 that merger savings adjustments would not be based on estimates but rather actual merger related savings. As discussed, Staff took the position that actual merger savings will be known in time for the Company's annual filing on April 1, 2004, at which time a one-time adjustment to the price cap index should be made. The Company presented evidence indicating that the actual permanent level merger savings may be known sooner than that. Based on the evidence, the Commission agrees with AI's recommendation that, on an interim basis, actual merger costs and savings continue to be examined and dealt with annually. This conclusion is consistent with the Commission's Order in Docket 01-0302. This approach leaves open the possibility of developing and implementing a permanent one-time adjustment to the regulatory treatment of merger costs and savings prior to the year 2004, if appropriate.

~~We agree with Staff's recommendation that the terms of the merger conditions shall remain in effect until the Commission completes its review of AI's annual filing for the calendar year 2003. The extent of actual merger related savings will be known in time for the Company's annual filing on April 1, 2004, at which time a one time adjustment to the price cap index should then be made.~~

The following should replace the above Commission Analysis and Conclusion:

"**Commission Observation**

After the development of the record in this proceeding on merger savings, Ameritech Illinois, Citizens Utility Board, Illinois Attorney General, Cook County State's Attorney's Office and the City of Chicago filed a Motion to Reopen the Record to submit a Joint Proposal to resolve certain merger savings issues. Further discussion of the Joint Proposal is found in Section V. J. of this Order."

II. ADDITIONS TO THE EXISTING FINAL PEPO

V. GOING FORWARD

J. Joint Proposal Relative to Merger-Related Savings

1) Joint Proposal

On January 16, 2002, Ameritech Illinois, the Citizens Utility Board, the Illinois Attorney General, the Cook County State's Attorney's Office and the City of Chicago (collectively, "Joint Movants") filed a Joint Motion to Reopen the Record ("Joint Motion") in this proceeding to consider a proposal ("Joint Proposal") to resolve the merger savings issue. On or about January 29, 2002, the Commission granted the Joint Motion. Thereafter, the Administrative Law Judges established a procedural schedule. Testimony was filed by AI, GCI/City, Staff, McLeod and by a separate coalition of competitive local exchange carriers consisting of AT&T, MCIWorldCom and McLeod (collectively referred to as "CLEC Coalition"). Hearings were held on March 8, and March 11, 2002, whereupon the matter was marked "Heard and Taken."

The Company and GCI/City filed testimony describing and supporting the Joint Proposal. Under the Joint Proposal, AI's customers would be issued a one-time credit of $197 million. This bill credit will require an additional distribution of $26 million of applicable tax credits to eligible customers. AI states that this proposed credit is based on actual data through calendar year 2000, as well as preliminary actual data for calendar year 2001. AI notes that the credit reflects a higher level of savings than was anticipated in the pre-merger estimates submitted to the Commission in Docket 98-0555. These data were projected forward over the 2002-2004 period. According to AI, this credit amount was then increased by an additional $50 million to reflect issues raised in the third-party audits of calendar year 1999 and 2000 savings data. To permit a one-time credit, total net merger savings over the 2001-2004 period were restated on a present value basis and 50% of this amount is to be allocated to ratepayers, consistent with the terms of the Merger Order. This results in the proposed $197 million credit.

AI states that this credit would be apportioned among its residential, small business, interexchange carrier ("IXC") and competitive local exchange carrier ("CLEC") customer groups based on relative revenues booked by AI during calendar year 2001. Credits would be issued to retail consumers (i.e., residence customers) and small business customers (i.e., business customer locations with four lines and less) on a per-line basis. Credits also would be issued on a per-line basis to CLECs which resell AI's services to residential and small business customers with four lines and less. CLECS which purchase unbundled network elements ("UNEs") and IXCs would be issued credits based on each individual carrier's proportionate share of the total revenues attributable to their respective customer groups in 2001.

AI submitted a financial analysis of this proposal which detailed the credit amounts for each customer group. CLECs purchasing UNEs, interconnection, transport and termination services would receive approximately $6.9 million. Interexchange carriers would receive approximately $11.1 million. Since these customers do not incur taxes on wholesale services, there are no applicable tax credits. Eligible end users will receive approximately $178.9 million, which consists of credits to residence and small business customers of $175.2 million and credits to CLECs which resell service to residence and small business customers of about $3.7 million. Based on the number of AI's network access lines as of December 31, 2001, eligible end users will receive $43.04 plus applicable tax credits, for a total of approximately $49.50 per access line. AI notes that the per-customer credit will be based on lines in service when the credit is issued and, therefore, these amounts are approximate. In addition, the Company asserts the adoption of certain adjustments proposed by McLeod will reduce these amounts slightly. AI further states that it could take up to 60 days to issue the credit. Should the Commission rule on this proposal in April, and absent changes that would require significant modifications to its billing system, the Company projects that credits would likely be issued by June, 2002.

With the issuance of this credit, the Company asserts certain other requirements of the Merger Order become unnecessary. AI states that the Joint Proposal is intended to supersede the merger savings component of the annual Price Cap Filing and to constitute a permanent solution to the requirement that net merger savings be shared with customers, thus obviating the need for further regulatory proceedings to address this issue. In addition, AI notes that Condition (26) requires the Company to track and report merger costs and savings on an annual basis, which are then subject to audit. As a result of the calendar year 2000 annual Price Cap Filing, the Commission initiated Docket 01-0128 to allow interested parties to review the 1999 audit findings. This proceeding is still pending. Pursuant to the terms of the Joint Proposal, and upon a Commission Order approving the Joint Proposal, the Company concludes that it would no longer be required to track and report merger costs and savings. Further, the Company maintains that no future audits would be required and the current proceedings in Docket 01-0128 would be terminated.

According to the Joint Movants, the Joint Proposal provides significant benefits to consumers. It permits prompt resolution of an issue that has proven to be far more time-consuming and litigious than anticipated in 1999. They state that customers will receive the benefits to which they are entitled immediately, without waiting for the conclusion of more reporting cycles, more third-party audits, more audit review proceedings and contested proceedings over permanent rate design. As Ms. TerKeurst testified on behalf of GCI/City:

> "The Joint Proposal . . . avoids the delay, expense, and uncertainty inherent in the current process. It provides consumers with a one-time lump sum distribution that is meaningful, amounting to approximately $43 plus applicable taxes, as described by Ameritech Illinois witness David W. Fritzlen. It replaces the cumbersome and difficult process of attempting to assess 'actual' merger savings. As a result, tracking of merger savings would no longer be required, and annual audits and the inevitable litigation over contested costs and savings would be avoided. Additionally, a permanent change to the alternative regulation mechanism in this docket would no longer be needed."

(GCI/City Ex. 1.0 on Reopening, at 6).

Staff's Position

Staff also recommends approval of the Joint Proposal, arguing that the Commission has the authority to modify the SBC/Ameritech Merger Order and should do so in this proceeding. It points out that several of the assumptions upon which the Commission based its merger savings allocations in the Merger Order have changed considerably. The Commission required that the PICC be eliminated and Ameritech Illinois' carrier access rates are now cost-based. Therefore, Staff states, the IXCs' portion of merger savings cannot be flowed through in the PICC and future cost-based access charges implicitly will include cost reductions associated with the merger. Staff also notes that all business services have now been reclassified as competitive and those services would not benefit from merger savings flowed through the Alternative Regulation Plan.

Staff testified that the $197 million credit constitutes a fair, reasonable and adequate resolution of the merger savings flow-through requirement in the Merger Order. Staff further notes that the size of the credit is consistent with the amounts addressed by Staff previously; that tracking and accounting for merger savings has proved to be a resource-intensive activity, requiring extensive review of AI's records, yearly reviews by the Commission and associated costs to the Commission, AI, and other parties; and that adopting the Joint Proposal would reduce regulatory burdens, conserve the resources that otherwise would be expended in the annual audits and would materially simplify the annual price cap filing proceedings.

McLeod's Position

As noted above, under the Joint Proposal, CLEC resellers will receive a per-line credit for their residence and small business (1-4 lines) customers that is equal to the credit AI will issue to its residence and small business (1-4 lines) customers. AI claimed it cannot readily determine from its records what proportion of resellers' business customers have one-to-four lines. Accordingly, AI proposed that the ratio of <u>its</u> one-to-four line customers to <u>its</u> total business customers (13%) be used as a reasonable proxy for the resellers' customer demographics.

McLeod objected to the use of the 13% proxy as it applies to its operations. It states that, 43% of its business customers have one-to-four lines per location. McLeod also objected on the grounds that the AI-proposed proxy failed to account for residence lines that it serves over Centrex facilities, because all Centrex lines are classified in AI's systems as business lines. According to McLeod, recognition of their residence Centrex lines would further increase their "business" lines eligible for a credit from 43% to 52%.

With respect to credits issued to residential customers, AI originally proposed that McLeod would be credited on a per-line basis only for residential customers served via resale of flat residential service. Ameritech Illinois would not give McLeod a per line credit for lines serving a McLeod residential customer via resold Centrex service. AI originally proposed that all McLeod customers served via Centrex resale should be treated as business customers. McLeod argues that such treatment is inappropriate as the result would be unrepresentative of its actual operations. During the rebuttal phase of testimony, McLeod notes that AI, Staff and GCI/City agreed that it should receive per-line credits for its residential customers served via Centrex resale.

CLEC Coalition's Position

The CLEC Coalition proposes that the Joint Proposal be adopted with respect to issuance of the proposed one-time credit to residence and business customers, resellers and IXCs, but that it be modified for CLECs purchasing UNEs. It states that the Joint Proposal departs from the Commission's Merger Order with respect to the manner in which the CLECs receive their share of merger-related savings. The CLEC Coalition cites to the following portion of the Order in support of its position:

It is the ruling of this Commission that the net merger-related savings should be allocated to Ameritech Illinois' customers as follows:

(1) Carriers purchasing AI's UNEs, interconnection, and transport and termination services will benefit from merger-related savings through updated rates resulting from modification of its TELRIC, shared and common costs.

(2) Once the share of the merger-related savings allocable to UNEs, interconnection, transport and termination purchasers have been identified, the remaining balance of savings will be allocated to interexchange, wholesale and retail customers. This will be done by dividing the remaining merger-related savings between IXCs on the one hand and end users (whether served via retail or wholesale) on the other, based on the relative gross revenues of each of these two groups.

(Merger Order, at 146).

Based on this discussion, the CLEC Coalition contends that purchasers of UNEs, interconnection, and transport and termination services must benefit from merger-related savings through updated rates resulting from modification of AI's TELRIC, shared and common costs. It therefore urges the Commission to reduce the shared and common costs currently included in AI's rates for UNEs and interconnection-related services. The CLEC Coalition contends that AI's shared and common cost fixed allocator is high relative to other states. Its primary concern with the Joint Proposal is that it does not provide the CLEC community with an updated fixed shared and common cost allocator. The CLEC Coalition states that a shared and common cost study recently filed in an Ameritech Indiana proceeding represents Ameritech's most recent post-merger proposal for a reasonable shared and common overhead allocator. The CLEC Coalition recommends that the Commission rely upon this study for purposes of implementing its Merger Order. Alternatively, it contends that the Commission should adopt the Illinois-specific allocator which AI filed in response to Merger Condition (12), which was further adjusted by the CLEC Coalition to eliminate certain product support costs which the it contends may have been double counted. As a third alternative, the CLEC Coalition recommends that the Commission adopt Staff's shared and common cost factor that was presented in Docket 00-0700.

The CLEC Coalition further contends that there are positive demand elasticity and competitive impacts associated with reducing post-merger UNE rates, as opposed to a one-time credit. The CLEC Coalition argues that lower UNE prices mean that customers who once were only marginally attractive may now become profit-generating, competitive targets. In contrast, the CLEC Coalition contends that a lump-sum payment would not result in more reasonable UNE rates and would provide CLECs with less incentive for expansion based upon most business models.

The CLEC Coalition further contends that the Commission should require AI to cap its UNE and interconnection service rates for five years. It argues that AI will realize merger-related savings not only in its overhead cost structure, but also in its cost structure generating direct TELRIC costs. The CLEC Coalition expresses concern that AI's updated cost studies will provide TELRIC results which exceed those currently supporting AI's approved UNE rates. The CLEC Coalition states that they do not wish to expend the time and resources to litigate new studies and wish certainty with respect to UNE pricing.

Alternatively, if the Commission approves a one-time credit, the CLEC Coalition proposes that the credit allocation methodology reflect UNE revenue growth over the next couple of years. The CLEC Coalition argues that using 2001 revenues understates the CLECs' share because intrastate revenues attributed to CLECs are growing at a much higher annual rate than are revenues for any other customer group. Hence, the CLEC Coalition argues that more of the merger-related savings from later years would be due to the CLECs than to the other customer groups. Therefore, it proposes to use separate growth trends for CLECs purchasing UNEs, IXCs, and end users, respectively. The CLEC Coalition assumes that UNE revenues would grow at a rate equal to 100% per year, and that AI consumer revenues would stay relatively constant, despite the reductions experienced by AI in the recent past. Under the CLEC Coalition's approach, the CLECs' share of the credit almost triples, from \$6.94 million to \$19.9 million, the IXC share increases slightly from \$11.13 million to \$11.37 million, and the retail residence, business and resellers share declines from \$178.93 to \$165.10 million.

Finally, the CLEC Coalition supports using McLeod's 43% factor to determine the proportion of all resellers' business lines that are eligible for a credit.

Response of AI

AI does not object to using data specific to McLeod to determine its residence and business lines eligible for a credit. With respect to other CLEC resellers which did not present data specific to their operations, AI states that there are two alternatives. In the absence of broader industry data, one alternative is to use the 13% factor developed for all resellers other than McLeod. The Company notes that resellers have different business strategies and make different decisions about which segment of the marketplace to target. AI contends that the fact that no other CLEC participating in this proceeding objected to the 13% factor suggests that McLeod's situation may not be representative of the industry generally.

Alternatively, AI states that McLeod's 43% factor could be used for all resellers. AI states that this would be simple to administer and would avoid any issue of disparate treatment, noting that use of this alternative approach would not significantly change the amount of the credit which would be issued to retail customers.

AI opposes the alternatives that would require it to seek out company-specific data from resellers. It asserts that these approaches are cumbersome and time-consuming, because there are over 30 resellers of business services to end users. Further, AI points out that resellers may not want to provide this information to it on the grounds that it is proprietary, and/or they may not respond to inquiries in a timely manner, thus requiring a default factor option in any event. AI also cautions that basing the credit on reseller-specific information would delay the issuance of the credit to all customers. Since only a small number of resale lines are impacted by the change in assumptions from 13% to 43%, AI argues that the administrative costs and delay required to determine eligibility with more precision greatly outweigh the benefits.

AI opposes the CLEC Coalition's proposal that its shared and common cost allocator be reduced in this proceeding. It states that the Joint Proposal is not inconsistent with the Merger Order. AI contends that a one-time credit would advance the rate benefits which all customers -- including CLECs – otherwise would have received in permanent rate adjustments. AI notes that the credit itself has been developed in a manner consistent with the Merger Order's requirements. That is, it is based on actual data, it reflects the 50/50 sharing principle which the Commission adopted, and relative revenue is a concept which the Merger Order accepts for end users and IXCs. Merger Order, at 149. AI further asserts that the CLEC Coalition's objection to the credit proposal appears to stem, at least in part, from a belief that CLECs purchasing UNEs were given a preferred position under the Merger Order – that is, that they were to receive 100% of merger savings achieved in the Company's wholesale operations (and assigned to UNEs), while all other customers would be limited to sharing the remainder of the 50% overall allocation to ratepayers. AI states that this is not a reasonable interpretation of the Merger Order.

AI disputes the CLEC Coalition's contention it is are being deprived of rate adjustments that it is entitled to under the Merger Order. AI explains that the one-time credit is not being proposed as a complete substitute for updated UNE rates. AI points out that all of the parties to this proceeding expect it to file new UNE cost studies and new UNE rates in the future. AI explains that, on a going-forward basis, the Company's TELRIC and shared and common cost studies necessarily will reflect its costs of operation that will include the impact of implementing merger-savings initiatives. Thus, CLECs will benefit over time from UNE rates that are lower than they otherwise would have been. AI states that the one-time credit to the CLECs could be viewed as a bridge for the period required to develop, file and litigate updated UNE cost studies.

AI points out that the Commission cannot require a significant reduction in UNE rates without impacting the credit amounts to other customer groups. If the CLECs receive more than the Joint Proposal contemplates, the portion of the credit that could be allocated to other customer groups will be smaller. AI explains that the Merger Order itself contemplates a residual approach to establishing the flow-through amount for other customers, a provision which the CLEC Coalition selectively ignores.

AI states that the CLEC Coalition has overstated the likely impact of UNE rate reductions on its business decisions. AI explains that, if the amount of merger savings allocated to the CLECs under the Joint Proposal were flowed through in rate reductions, the effect would be extremely small. AI also states that the CLECs can use the one-time credit to fund expansion of their marketing plans.

AI further contends that the CLEC Coalition has not provided any evidence which would support a unilateral reduction in the shared and common cost factor. AI points out that the shared and common cost factor to which the CLEC Coalition now objects was approved by the Commission based on a full record. Order in Docket 96-0486/0596, adopted February 17, 1998, at 47-54. AI notes that the Proposed Order in the Shared Transport Docket concludes that the Company complied with the requirements of this TELRIC Order relative to the shared and common cost factor and that it should continue to be used in developing UNE rates. Proposed Order in Docket 00-0700, dated February 8, 2002, at 27.

AI argues that the CLEC Coalition is attempting to circumvent normal ratemaking processes by importing into this proceeding service cost testimony circulated in an Ameritech Indiana proceeding. AI states that it is well established that this Commission cannot borrow rates or inputs from other states or geographic areas without a substantial evidentiary basis in this record. Wabash, C. & W. Ry. Co. v. Ill. Comm. Comm., 335 Ill. 624, 641 (1923); Union Elec. Co. v. Ill. Comm. Comm., 77 Ill.2d 364, 383 (1929); see, Atchinson, T. & S. F. Ry. Co. v. Ill. Comm. Comm., 335 Ill. 624, 641 (1929). AI further notes that the Indiana testimony will never even be considered in Indiana because the same CLECs which sought its admission into this record have successfully persuaded the Indiana Commission to strike it from the Indiana proceeding.

AI disputes the CLEC Coalition's claim that the Indiana study provides relevant information regarding merger savings. AI states that the Indiana shared and common cost study was based on calendar year 2000 actual results and merger savings in 2000 were relatively small. Furthermore, 100% of merger savings achieved in calendar year 2000 were included in the Indiana study, which, AI contends, is contrary to the Illinois Merger Order's requirements. Furthermore, it avers that the Indiana study cannot be used because all cost studies, including shared and common cost studies, are state-specific in nature. All of the cost amounts and most drivers of those costs are attributable to and/or are identifiable only to the state being studied. AI explains, for example, that uncollectibles are a significant factor in the overall level of shared and common costs. AI states that it has the highest level of wholesale uncollectibles in the Ameritech region, whereas Ameritech Indiana has the lowest. AI explains that this difference alone could significantly impact the cost results.

AI further states that a shared and common cost study cannot be viewed in isolation from associated TELRIC studies. As it explains, the shared and common cost allocator is a ratio between a pool of shared and common costs (the numerator) and a pool of direct costs (the denominator). Merger-related cost changes are likely to impact both the numerator and the denominator. Furthermore, different cost assumptions underlying the denominator can impact both the absolute value of the numerator and the relational value between the numerator and the denominator. AI notes that the CLEC Coalition ignored the updated TELRIC studies which accompanied the Indiana shared and common cost study and, thus is "picking and choosing" between the elements of the Indiana filing and bringing to Illinois only those elements which promote its economic self-interest.

Finally, AI states that the Indiana study cannot be relied upon for any purpose. Since the circulation of the Indiana study, the SBC/Ameritech service cost organization has identified revisions which need to be made in that study. According to AI, the direct costs used in the denominator were overstated and forward-looking adjustments need to be made to the direct costs to bring them into conformance with the TELRIC study results. Although only preliminary data were available, AI states these revisions were expected to increase the Indiana shared and common factor substantially.

AI states that the CLEC Coalition's alternative proposal to use the AI shared and common cost study submitted in compliance with Merger Condition (12) is also inappropriate. AI notes that this study was not introduced into this record and has not been reviewed by the Commission. Furthermore, the CLEC Coalition proposes a significant adjustment to the factor based on the bare assertion in a footnote that there may have been double recovery of certain product support costs. AI contends that such an assertion does not constitute evidence and that, in any event the CLEC Coalition is mixing two different vintages of studies. Furthermore, AI's shared and common cost study witness testified that he had examined the study and had found no evidence of double counting in the updated studies filed in response to the Merger Order.

AI also opposes the CLEC Coalition proposal that the Commission impose an absolute cap on future UNE rate changes for a five-year period. AI contends that this rate cap proposal has no place in this reopened proceeding which is directed at the merger savings flow-through obligation established in the Merger Order. AI notes that nothing in the Merger Order suggests that UNE rates would be capped after merger savings were flowed through.

AI further contends that the CLEC Coalition's proposal also would be unwise as a matter of policy and contrary to law, pointing out that its UNE rates were established in 1998, based on 1996 data. Given the relative age of the studies, AI states that it would be appropriate to revisit them in light of more current cost conditions and circumstances. AI contends that the effect of the CLEC Coalition proposal would be to insulate it completely against cost and rate changes for almost a decade (1998-2007) and that such a result would be unreasonable. AI further notes that under Section 252(d)(1) of the Telecommunications Act of 1996, it is entitled to charge UNE rates that cover its TELRIC costs and a reasonable allocation of shared and common costs. AI states that it would be contrary to sound public policy and the cost-based requirements of TA96 arbitrarily to preclude it from filing adjustments to these rates.

The Company also opposes use of a shared and common cost analysis Staff submitted in the shared transport docket (Docket 00-0700) and supplied as an attachment to its rebuttal testimony in this proceeding. AI states that introduction of this testimony in the rebuttal phase of a very expedited proceeding was improper. AI further contends that this Staff analysis is outside the scope of this reopened proceeding. AI points out that this analysis was contested in Docket 00-0700 and these contested issues were not resolved on their merits. AI asserts that it pointed out the numerous deficiencies in Staff's testimony in Docket 00-0700, including the fact that the model had not been introduced in that proceeding or been subjected to regulatory review; that Staff appeared to have relied on a preliminary version of the model, rather than on the finalized version; that Staff's estimates of merger related savings were being litigated in the merger savings audit proceeding and had not been resolved by the Commission; and that Staff's calculations could not be verified or duplicated. Staff also is proposing use of a shared and common cost study that has been divorced from its associated TELRIC studies. Under these circumstances, AI contends that Staff's analysis from another docket cannot be used for ratemaking purposes.

AI opposes the CLEC Coalition's growth-based allocation proposal. AI contends that the CLEC Coalition's assumption that UNE revenues will grow 100% year-over-year for the next three years is too high. If the CLEC Coalition's UNE revenue growth analysis is converted into a UNE line-growth analysis, AI states that it would be provisioning more UNE loops to CLECs than retail loops to its own end users by the beginning of 2005. AI explained that, based on this analysis, CLEC Coalition would have substantially more than 45% of the marketplace by 2004, if one includes both AI-provided loops and CLEC-provisioned loops (i.e., facilities bypass). If the CLEC Coalition's growth trend is extended through 2006, the Company states that it would be only a wholesale company, with no retail customers whatsoever. AI charges that these are not realistic scenarios. AI further contends that MCIWorldcom's attempt to impeach Ameritech Illinois' analysis during cross-examination proved nothing, because MCIWorldcom consistently divided AI's UNE revenues by line counts that included resold services and lines provided by other local service providers. AI further contends that any forward-looking projection of CLEC revenues is necessarily speculative. Growth trends based on historical data are not probative where, as here, the growth trend begins at or near zero.

AI also points out that the CLEC Coalition's proposal has the effect of counting the same end users twice. If the Joint Proposal is approved, AI states that it will shortly be issuing credits to all of the eligible residence and business end users which it serves today. To the extent that CLECs are successful in persuading these customers to switch their service in the future, which is what AI contends the growth data implies, these customers already will have had their share of merger savings flowed through to them. Looked at from the end user's perspective, AI argues that the CLECs should not receive a higher credit today in anticipation of serving customers who already will have received a credit directly from Ameritech Illinois.

Response of GCI/City

GCI/City agree that this is not the docket to undertake a review of shared and common costs studies and related pricing elements. Although the Merger Order required revised TELRIC and shared and common cost studies, GCI/City note that the Order did not place the review of those studies in the Alternative Regulation Plan docket. They contend that the CLEC Coalition has not offered sufficient information to assess or implement the UNE rate reductions it has proposed. Further, GCI/City note that the differences between the current allocator and the Indiana-based allocator the CLEC Coalition proposes are not due solely to merger-related savings and criticize the CLEC Coalition because it offers no detail on what portion of the substantial reduction it recommends can be traced to merger savings. GCI/City also recommend that the Commission reject Staff's view that a shared and common cost factor could be adopted in this docket based on Staff's testimony in Docket 00-0700. They contend that a new allocator is best determined in a separate proceeding. With respect to the five-year cap on UNE rates, GCI/City contend that this docket is not the proper forum to consider such a pricing policy.

GCI/City also oppose the growth rate projections and allocations proposed by the CLEC Coalition. They state that a growth-based allocation of merger-related savings to the different groups of customers could be appropriate only if growth rates could be estimated with reasonable accuracy. However, GCI/City maintain that the growth rates in purchases of UNEs and interconnection services since they were first introduced clearly are not sustainable. They concur with the Company and conclude that the continuation of recent growth rates would quickly outpace all available demand for local telecommunications services. GCI/City support AI's view that a projected growth rate for UNE revenues over the next three years would be speculative and that the approach taken by the CLEC Coalition would have the effect of double counting the same end users.

With respect to the eligibility issues raised by McLeod, GCI/City support basing the amount of credits provided to McLeod on the information that McLeod has provided with respect to its small business and residence customers. With respect to other resellers, GCI/City recommends that the Commission use the 13% proxy originally developed by AI.

Response of Staff

Staff supports the use of McLeod specific data to determine McLeod's credit allocation. With respect to other resellers, Staff states that AI should contact each carrier and obtain the number of small business customers, since it appears that only 30 carriers would need to be contacted. If the Commission believes that this is too burdensome, Staff suggests that AI be required to contact the five largest CLEC providers of resold business services in Illinois and develop a CLEC-based proxy based on the average of their customer demographics.

Staff agrees that the Merger Order contemplates that UNE rates should be reduced to reflect merger-related savings through a reduction in shared and common costs and that future UNE rates implicitly will include cost reductions related to the merger. Thus, states Staff, the only disputed issue appears to be timing.

Staff states that it does not recommend that the Joint Proposal be modified to pass merger related savings to UNE purchasers through lower UNE rates. It maintains that this docket was reopened for consideration of the narrow issue of merger costs and savings. Review of a shared and common cost study is a complex undertaking. Moreover, Staff states that any modification of AI's shared and common cost factor should be limited to changes resulting from the sharing of merger costs and savings and that the Indiana study is not limited in this manner. Further, Staff explains that AI's rates should be based on it own costs. Staff notes that it had reviewed and adjusted the AI shared and common cost study submitted in response to Merger Condition (12) and proposed specific adjustments to reflect a reduction in shared and common costs due solely to merger related costs and savings in Docket 00-0700. Staff states that it is providing that analysis to the Commission in this proceeding in the event the Commission chooses to utilize it.

Staff opposes the five-year cap on UNE rates proposed by the CLEC Coalition arguing that a cap on UNE rates is neither required by the Merger Order, nor is it part of the Joint Proposal under consideration in this re-opened docket. In the absence of an agreement by the parties to address it here, Staff states that the proposed rate cap is beyond the scope of the re-opened docket and should not be imposed by the Commission.

Finally, Staff opposes the CLEC Coalition's recommendation that, if one-time credits are issued based on the relative revenues of the customer groups, the revenue shares should reflect growth over the next three years. Staff states that the Joint Proposal's allocation of the credit among customer groups is just, fair, and reasonable. Further, if any future revenue growth adjustment were allowed, it does not believe that the 100% growth factor proposed by the CLEC Coalition is reasonable. According to Staff, the Joint Movants presented convincing evidence that this growth rate is unreasonable.

Commission Analysis and Conclusion

The Commission concludes that the Joint Proposal should be approved with modifications. We that the Joint Proposal will benefit consumers through the issuance of significant one-time credits. The methodology used to develop the credit is consistent with our directives in Docket 98-0555 in that they are derived from actual data and not the preliminary estimates in the SBC/Ameritech Merger proceeding. Further, the net savings are to be allocated on a 50/50 basis between ratepayers and shareholders, which also is consistent with our directives in the Merger proceeding. The Commission finds the Joint Proposal, with modifications, to be fair and reasonable.

We recognize that the Merger Order did not specifically discuss a one-time credit mechanism to flow through merger savings. However, we agree with AI, GCI/City and Staff that the one-time credits alternative does provide a reasonable resolution of the flow-through obligation and that this particular mechanism is consistent with our preference that the calculation of merger savings be based upon actual data. The fact that customers will see an immediate and tangible benefit from this Proposal is compelling, given the time that has passed since the Merger Order was adopted and the expense incurred by all parties to the annual audits.

We also agree that all parties, including the Commission itself, will benefit if existing tracking, reporting, auditing and audit review requirements can be eliminated. These processes, though necessary to an audit proceeding, have proved to be extremely burdensome, expensive, time-consuming and litigious. Though in theory the annual audit mechanism eventually will produce results that will result in merger savings being passed on to consumers, to date consumers have seen little tangible benefits of such a process.

McLeod has raised certain issues with respect to identifying reseller lines eligible for the credit. The Commission agrees with McLeod's that its credit should be based on the unrebutted carrier-specific data which it submitted. Several options were proffered by the parties on how to determine eligible business lines for resellers that did not provide their own data. In this instance the Commission agrees with AI that simplicity and ease of administration should be key controlling policy objectives. Based on the evidence in the record, the Commission agrees with the CLEC Coalition and concludes that 43% should be used as a proxy for reseller business customers with one-to-four lines. The Company stated that such a proxy would be simple to administer and, most importantly, would avoid any issue of disparate treatment. We note that use of a 43% proxy would not significantly change the amount of the credit that would be issued to retail customers. Consequently, and for reasons cited above, we reject Staff's alternatives.

As McLeod noted early in the proceedings there was disagreement as to whether it would be given a per line credit for lines serving its residential customers via resold Centrex service. AI, Staff and GCI/City agree, and the Commission concludes, that McLeod should receive per-line credits for its residential customers served via Centrex resale.

The CLEC Coalition's proposal that the Commission use a forward-looking growth rate to allocate the credit between customer groups will not be adopted as we believe it is speculative. We note that revenues from CLECs purchasing UNEs have been growing more rapidly than revenues from other customer groups; however this is not a sufficient basis to adopt the CLEC Coalition's proposed growth factor. The CLEC Coalition did not provide an adequate evidentiary basis for a sustained 100% annual growth factor. We agree with the Company and City/GCI that the CLEC Coalition's projections produce unrealistic results. In addition, projecting revenues forward may produce the unintended results of double counting end users when credits are being issued currently to all of AI's existing customers.

2) AI's Motion to Strike

During the course of discovery, the CLEC Coalition sought from the Company a shared and common cost study that had been circulated by Ameritech Indiana in an Indiana ratemaking proceeding. Further, the CLEC Coalition indicated that it had intended to use the Ameritech Indiana shared and common cost study as evidence in this proceeding and would sponsor testimony based upon the study. The CLEC Coalition made an oral Motion to Compel the discovery material and AI objected. Additionally, AI made an oral Motion to Strike any testimony relying on the Ameritech Indiana shared and common cost study. On February 26, 2002, the Administrative Law Judges granted the oral Motion to Compel and reserved ruling on the Company's Motion to Strike, indicating that they would take the motion with the case. During the course of the March 8 and 11, 2002 hearings, the Company again orally restated its objection to the use of the Ameritech Indiana shared and common cost study and the related testimony. On March 21, 2002, the Company filed a written Motion to Strike, reiterating its positions made earlier. The CLEC Coalition and Staff filed responses to the Motion to Strike and the Company filed a reply.

AI moved to strike that portion of the CLEC's Coalition's testimony which relies on the Ameritech Indiana shared and common cost study and the related portions of other witnesses' testimony who responded to it. The Company contends that the Ameritech Indiana shared and common cost study is not relevant to any issue in this reopened proceeding. The Company argues that the Commission reopened the record in this docket on narrow grounds, to determine whether the Joint Proposal should be adopted, not initiate a UNE rate proceeding. The Joint Proposal involves the issuance of a one-time credit to customers in satisfaction of the savings flow-through obligation established in the Merger Order. The Joint Movants did not propose, and AI claims the Commission did not authorize, the initiation of a UNE rate proceeding.

Further AI states that the Ameritech Indiana shared and common cost study was not undertaken to identify the impact of the merger on UNE rates and that only a small amount of merger savings were included in that study; that costs specific to another company cannot be used to set rates for AI, either under the Illinois Public Utilities Act or the Telecommunications Act of 1996; that shared and common costs studies cannot be viewed in isolation from their associated TELIRC studies; that the Indiana study will never be considered in Indiana because they have been stricken from the record there; and that revisions need to be made to the Ameritech Indiana shared and common cost study which result in a substantial increase in the shared and common allocator. AI asserts the Ameritech Indiana shared and common cost study is not relevant to any issue within the scope of this proceeding.

The CLEC Coalition contends that the issue of shared and common costs is inextricably related to merger savings and the Joint Movants' merger savings proposal. The CLEC Coalition argues that the Commission cannot evaluate the Joint Proposal in a vacuum, and that while addressing the Joint Proposal the Commission also must consider the issue of merger savings as it relates to shared and common costs.

Commission Conclusion

The core question in deciding whether the Motion to Strike should or should not be granted is what is the proper scope of the re-opening proceedings. We disagree with the CLEC Coalition that we must, at this point, consider the issue of shared and common costs as it relates to UNEs in order to determine whether the Joint Proposal itself is fair, just and reasonable, and in the public interest. As indicated in the Merger Order, carriers purchasing UNEs will benefit from merger related savings through updated rates resulting from modification of TELRIC, shared and common costs. The re-opening proceeding was intended to address the treatment of merger savings and not as a proceeding in which UNE rate changes would be implemented. To do so would circumvent normal ratemaking processes. Whether the Joint Proposal is fair, just and reasonable may be decided separate and apart from merger savings as they relate to the provisioning of UNEs. Therefore, we grant the Company's Motion to Strike.

Further, the Commission concludes that even if it were to consider merger related savings relative to UNEs, and their shared and common costs, it would be inappropriate to import an Ameritech Indiana proposed shared and common cost study and impose that study on Ameritech Illinois. We agree with the Company that the Commission cannot borrow rates or their inputs from other states without a substantial evidentiary basis in the record. Here the evidentiary basis is wanting. The study sought to be used by the CLEC Coalition has been stricken from the record of the Indiana proceeding. Further, the type of study sought to be used by the CLEC Coalition is inappropriate as it contains Indiana state specific data. The CLEC Coalition recognizes the Ameritech Indiana shared and common cost study has limitations. The Commission rejects its use of what the CLEC Coalition call an "imperfect proxy."

By this decision, we are not changing our conclusion in the SBC/Ameritech Merger Order that merger savings ultimately should be reflected in updated UNE rates. The issue here is one of timing and scope. This reopened proceeding is not the appropriate context in which to address complex UNE pricing issues. We agree with AI, Staff and GCI/City that the one-time credit proposed for the CLECs is an appropriate interim measure and will not operate to deprive the CLECs of updated UNE prices in the future.

III. OTHER REQUIRED CHANGES TO THE FINAL PROPOSED ORDER

The following changes are required in the Findings and Ordering paragraphs. New findings (6) and (7) should be added after current finding (5) on page 204 of the Final PEPO and the other findings should be renumbered accordingly:

> "(6) the Joint Proposal submitted by Ameritech, the Citizens Utility Board, the Illinois Attorney General, the Cook County State's Attorney's Office and the City of Chicago should be approved, in accordance modifications required herein and with the prefatory portion of this Order; and Ameritech shall issue credits to customers in accordance with the Joint Proposal within 60 days of the date of this Order in full satisfaction of its obligation to flow merger savings through to its customers;
>
> (7) as a result of the approval of the Joint Proposal, the tracking, reporting and auditing requirements applicable to merger savings as a result of the Commission's order in Docket 98-0555 are eliminated and Docket 01-0120 is hereby terminated;"

The following new ordering paragraph should be added after the third existing ordering paragraph on page 205 of the Final PEPO dealing with the CUB/AG complaint in Docket 00-0764:

> "IT IS FURTHER ORDERED that the Joint Proposal is hereby approved and Ameritech will issue credits to customers in accordance with the Joint Proposal within 60 days of the date of this Order in full satisfaction of its obligation to flow merger savings through to its customers.
>
> IT IS FURTHER ORDERED that the tracking, reporting and auditing requirements applicable to merger savings as a result of the Commission's Order in Docket 98-0555 are eliminated and Docket 01-0120 is hereby terminated."

DATED:	April 1, 2002
BRIEFS ON EXCEPTION DUE:	April 5, 2002

Phillip Casey/Eve Moran,
Administrative Law Judges